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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,136

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David M. Allen

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EXAMINER

NGUYEN, SON T

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

05/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/693,136

Applicant(s)

ALLEN, DAVID M.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1 & 17** are rejected under 35 U.S.C. 102(b) as being anticipated by Handwerker (4413029).

For claim 1, Handwerker teaches a protective ground mat comprising: a non-rigid base C; a plurality of hold-downs 53 (or the anchors as described in col. 4, lines 42-45) coupled to the base; and a plurality of tensioners T, 17,45,46, each tensioner having a first portion 46,45,17 that is fixedly coupled to the non-rigid base and a second portion T that may be selectively coupled to the first portion to adjust a distance between an associated pair of the hold-downs to thereby adjust a size, a shape or both the size and the shape of a perimeter of the non-rigid base.

For claim 17, Handwerker teaches a method of installing a protective ground mat to the ground, the protective ground mat having a non-rigid base C, the method comprising: securing (by using ballast 53) the protective ground mat to the ground at a plurality of locations; and tensioning (by using members T,17,45,46 or the anchors as described in col. 4, lines 42-45) the base after it has been secured to the ground to adjust a size, a shape or both the size and the shape of a perimeter of the base so that it conforms to a contour of the ground.

3. **Claims 17-19** are rejected under 35 U.S.C. 102(b) as being anticipated by Ireland (1321747).

For claim 17, Ireland teaches a method of installing a protective ground mat to the ground, the protective ground mat having a non-rigid base 12, the method comprising: securing (by placing it to the designated location) the protective ground mat to the ground at a plurality of locations; and tensioning (by tightening or loosening strap and loop 8,10,11,14) the base after it has been secured to the ground to adjust a size, a shape or both the size and the shape of a perimeter of the base so that it conforms to a contour of the ground. Note that although Ireland teaches a cover for protecting crop or the like, the cover does protect the ground in the area where the cover is placed; hence, a ground mat. In addition, the definition of a mat is a piece of fabric made of plaited or woven rushes, straw, hemp, or similar fiber, or of some other pliant material, as rubber, used as a protective covering on a floor or other surface, to wipe the shoes on, etc.” (www.dictionary.com), which the cover of Ireland fits the definition and it is placed on the ground. Furthermore, although it appears that Applicant’s ground mat is laid flat on the ground surface as shown in fig. 2, hence, ground mat, it is also a cover that is not directly laid flat on the ground surface as shown in fig. 13. Therefore, it is concluded that the preamble stating a ground mat is not given weight to the interpretation of the mat being laid flat directly on the ground as generally thought of a ground mat.

For claim 18, Ireland inherently teaches wherein prior to securing the protective ground mat to the ground, the method includes opening a slit (where ref. 9 is pointing

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at) in the base and fitting the base about an object. A user has to open the slit at ref. 9 and fit it around the object or plant before securing the mat on the ground.

For claim 19, Ireland teaches wherein the step of fitting the base about an object includes forming a hole (where ref. 11 is pointing at) in the base, the hole intersecting the slit (see fig. 2 where the slit (where ref. 9 is pointing at) intersects the hole (where ref. 8 is pointing at)).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-4,9,10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ireland (as above) in view of Rowe et al. (369616).

For claim 1, Ireland teaches a protective ground mat comprising: a non-rigid base 12; and a plurality of tensioners 8,10,11,14 each tensioner having a first portion 10,14 that is fixedly coupled to the non-rigid base and a second portion 8,11 that may be selectively coupled to the first portion to adjust a distance between an associated pair of the hold-downs to thereby adjust a size, a shape or both the size and the shape of a perimeter of the non-rigid base. However, Ireland is silent about a plurality of hold-downs coupled to the base.

Rowe et al. teach a tree protector comprising a non-rigid base D having a plurality of hold-downs F coupled to the base to secure the base to the ground. It would

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have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of hold-downs as taught by Rowe et al. coupled to the base of Ireland in order to secure the protector/mat to the ground. Note that although Ireland and Rowe et al. teach a cover for protecting crop or the like, the cover does protect the ground in the area where the cover is placed; hence, a ground mat. In addition, the definition of a mat is a piece of fabric made of plaited or woven rushes, straw, hemp, or similar fiber, or of some other pliant material, as rubber, used as a protective covering on a floor or other surface, to wipe the shoes on, etc." (www.dictionary.com), which the covers of Ireland and Rowe et al. fit the definition and it is placed on the ground.

Furthermore, although it appears that Applicant's ground mat is laid flat on the ground surface as shown in fig. 2, hence, ground mat, it is also a cover that is not directly laid flat on the ground surface as shown in fig. 13. Therefore, it is concluded that the preamble stating a ground mat is not given weight to the interpretation of the mat being laid flat directly on the ground as generally thought of a ground mat.

For claim 2, Ireland as modified by Rowe et al. (emphasis on Ireland) further teaches wherein the base includes a pair of edges 9 that cooperate to define a slit and wherein the protective ground mat further includes a closure device 8 for selectively closing the slit.

For claim 3, Ireland as modified by Rowe et al. is silent about wherein the closure device includes at least one of: a hook and loop fastener and a zipper. It would have been an obvious substitution of functional equivalent to substitute the closure device of

Ireland as modified by Rowe et al. with at least one of a hook and loop fastener and a zipper, since both types of fastener would perform the same function to close up the slit.

For claim 4, Ireland as modified by Rowe et al. (emphasis on Ireland) further teaches wherein the slit extends from an outer edge of the base to a point outwardly of a center of the base. See figures, self explanatory.

For claim 9, Ireland as modified by Rowe et al. (emphasis on Ireland) further teaches wherein the first portion 10,14 includes a loop 10 and the second portion 8,11 includes a strap, the strap having a first end, which is secured to the base (see fig. 4), and a second end 11 that is disposed through the loop (see fig. 2 where ref. 11 fits through loop 10).

For claim 10, Ireland as modified by Rowe et al. (emphasis on Ireland) further teaches wherein an aperture (where ref. 8 is pointing at in fig. 2) is formed in the base and the slit intersects the aperture (ref. 9 goes all the way up to ref. 8 in fig. 2).

6. **Claims 5-8,11-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ireland as modified by Rowe et al. as applied to claims 1,2,4 above, and further in view of Allen (4700507).

For claims 5-8, Ireland as modified by Rowe et al. is silent about wherein the slit terminates inwardly at a series of perforations, and wherein the series of perforations define a plurality of intersecting lines. Allen teaches a tree protector comprising a base 8 with a plurality of cut-aways 10-12 to accommodate different tree sizes, and wherein each shape is disposed inside or abuts another one of the shapes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

employ a plurality of cut-aways as taught by Allen in the base of Ireland as modified by Rowe et al. in order to accommodate different tree sizes. In addition, it would have been an obvious substitution of functional equivalent to substitute the cut-aways of Ireland as modified by Rowe et al. and Allen with perforations, since both types of removal means would perform the same function to allow a user to tear away the material so as to accommodate to different tree sizes. The combination of Ireland as modified by Rowe et al. and Allen teaches wherein the series of perforations define a plurality of shapes, since Allen already teaches a plurality of shapes. Furthermore, it would have been an obvious substitution of functional equivalent to substitute the cut-aways of Ireland as modified by Rowe et al. and Allen with perforations defining a plurality of intersecting lines, since both types of removal means would perform the same function to allow a user to tear away the material so as to accommodate to different tree sizes.

Note that although Ireland, Rowe et al., and Allen teach a cover for protecting crop or the like, the cover does protect the ground in the area where the cover is placed; hence, a ground mat. In addition, the definition of a mat is a piece of fabric made of plaited or woven rushes, straw, hemp, or similar fiber, or of some other pliant material, as rubber, used as a protective covering on a floor or other surface, to wipe the shoes on, etc." (www.dictionary.com), which the covers of Ireland, Rowe et al., and Allen fit the definition and it is placed on the ground. Furthermore, although it appears that Applicant's ground mat is laid flat on the ground surface as shown in fig. 2, hence, ground mat, it is also a cover that is not directly laid flat on the ground surface as shown

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in fig. 13. Therefore, it is concluded that the preamble stating a ground mat is not given weight to the interpretation of the mat being laid flat directly on the ground as generally thought of a ground mat.

For claims 11-15, Ireland as modified by Rowe et al. is silent about cutting indicia on the base, wherein the cutting indicia defines a plurality of shapes, wherein each shape is disposed inside or abuts another one of the shapes, wherein the shapes are concentric with one another, and wherein each of the shapes is similar but differently sized.

Allen teaches a tree protector comprising a base 8 with a plurality of cut-aways or cutting indicia 10-12 to accommodate different tree sizes, wherein the cutting indicia defines a plurality of shapes, wherein each shape is disposed inside or abuts another one of the shapes, wherein the shapes are concentric with one another, and wherein each of the shapes is similar but differently sized. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of cut-aways with the features as taught by Allen in the base of Ireland as modified by Rowe et al. in order to accommodate different tree sizes.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ireland (as above) in view of Rowe et al. (as above) and Allen (as above). All limitations have been discussed in the above claims, so please see the above claims for explanation.

Response to Arguments

7. Applicant's arguments filed 2/28/07 have been fully considered but they are not persuasive.

Applicant argued that Applicant notes that claim 1 calls for a plurality of hold-downs that are coupled to a non-rigid base. Applicant submits that Handwerker does not teach or suggest hold-downs.

Based on the definition provided by www.dictionary.com, coupled means "to fasten, link, or associate together in a pair or pairs; to join; connect"; thus, the ballast material 53 of Handwerker are joined or connected or associated together with the base by the two touching each other through friction. There are many definitions of coupled, thus, if Applicant meant coupled to be by sewing or some sort of mechanical device, then Applicant should claim it as such; otherwise, the claim language will be interpreted broadly within the scope of the definition of the term coupled. The ballasting material 53 of Handwerker is, no doubt, a hold-down because it does provide hold down to the cover. In addition, there are a plurality of these ballasting material (each pebble or crushed rock).

Applicant argued that regarding Claim 17, Applicant notes that the claim recites "tensioning the base after it has been secured to the ground to adjust a size, a shape or both the size and the shape of a perimeter of the base so that it conforms to a contour of the ground." Applicant submits that Handwerker does not teach or suggest these limitations.

The cover of Handwerker is placed over the ground to be covered, tensioning exists by the user placing a weight T on the strap 45 (col. 4, lines 21-41). The unconnected portion of the strap 45 secured the weight T by looping around the weight T and tying a knot. Having the weight T hanged on the strap definitely tensioned the

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cover to adjust the cover's perimeter somewhat. For example, in fig. 5, if the weight T was not there, the cover's perimeter at, say ref. 13, would be a little short since the weight T is not pushing against the cover. However, if the weight T is employed, the cover's perimeter at, say ref. 13, would be longer since the weight T tensioned on the cover to expand the cover's material, thus, weight T would change the perimeter somewhat. In addition, note that col. 4, lines 42-45, states that an anchor can be used to tie down the remote end of the strap 45, thus, if the user pulls on the strap 45 to be tied down by the anchor, this would definitely tensioned the cover and change the perimeter's shape or size.

Applicant argued that Ireland does not teach or suggest a method that involves a protective ground mat. More specifically, Ireland appears to relate to a crop cap that employs a rigid frame (shown in Figure 5) and a fabric covering 12. Applicant submits that as a crop cap is not a protective ground mat, Ireland cannot teach or suggest each of the limitations of Claim 17 as arranged in the claim.

Although Ireland teaches a cover for protecting crop or the like, the cover does protect the ground in the area where the cover is placed; hence, a ground mat. In addition, the definition of a mat is a piece of fabric made of plaited or woven rushes, straw, hemp, or similar fiber, or of some other pliant material, as rubber, used as a protective covering on a floor or other surface, to wipe the shoes on, etc."

(www.dictionary.com), which the cover of Ireland fits the definition and it is placed on the ground. Furthermore, although it appears that Applicant's ground mat is laid flat on

the ground surface as shown in fig. 2, the claim language does not indicate a direct contact with the ground. As a matter of fact, fig. 13 of Applicant's invention shows that the "ground mat" is not directly laid on a flat ground as argued, and that it appears that the ground mat is a semicircular hollow shaped mat surrounding a tree and not a flat sheet laid on the ground as argued. Figure 13 of Applicant's invention appears to be very much similar to that of Ireland's invention for surround a plant, i.e. tree, and not laid flat on the ground. Therefore, it is concluded that the preamble, stating a ground mat, is not given weight to the interpretation of the mat being laid flat directly on the ground as generally thought of a ground mat.

Applicant argued that neither Ireland nor Rowe et al. disclose a protective ground mat, nor do they relate to the field of the present invention or a field reasonably pertinent to the resolution of the problem being solved by the present invention. Consequently, neither Ireland nor Rowe et al are analogous art and cannot be properly cited as prior art in an obviousness rejection. In re Clay, 966 F.2d 656,658 (Fed. Cir. 1992).

In response to applicant's argument that Ireland and Rowe et al. are nonanalogous arts, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both references deal with covers, which is the same field of endeavor as Applicant's ground mat, i.e. a cover of the ground. In addition, as

mentioned above, fig. 13 of Applicant's invention shows that the "ground mat" is not directly laid on a flat ground as argued, and that it appears that the ground mat is a semicircular hollow shaped mat surrounding a tree and not a flat sheet laid on the ground as argued. Figure 13 of Applicant's invention appears to be very much similar to that of Ireland's and Rowe's inventions for surrounding a plant, i.e. tree, and not laid flat on the ground. Therefore, it is concluded that the preamble, stating a ground mat, is not given weight to the interpretation of the mat being laid flat directly on the ground as generally thought of a ground mat.

Applicant argued that neither Ireland nor Rowe et al. teach or suggest a protective ground mat having a non-rigid base or a plurality of tensioners having a first portion that is fixedly coupled to the non-rigid base and a second portion that may be selectively coupled to the first portion to adjust a distance between a pair of the hold downs to thereby adjust a size, a shape or both the size and the shape of a perimeter of the non-rigid base.

As mentioned in the above rejection, Ireland as modified by Rowe et al. does teach tensioners 8,10,11,14 (of Ireland), each tensioner having a first portion 10,14 that is fixedly coupled to the non-rigid base and a second portion 8,11 that may be selectively coupled to the first portion to adjust a distance between an associated pair of the hold-downs to thereby adjust a size, a shape or both the size and the shape of a perimeter of the non-rigid base.

Rowe et al. were relied on for a teaching of a tree protector comprising a non-rigid base D having a plurality of hold-downs F coupled to the base to secure the base

to the ground, to which Ireland lacks. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of hold-downs as taught by Rowe et al. coupled to the base of Ireland in order to secure the protector/mat to the ground.

Applicant argued that Allen, like Rowe et al., is directed to a tree protector and as such, constitutes non-analogous art that cannot be cited in an obviousness rejection (see above).

In response to applicant's argument that Allen is non-analogous arts, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Allen and the present invention deal with covers, either for trees or the ground. In addition, as mentioned above, fig. 13 of Applicant's invention shows that the "ground mat" is not directly laid on a flat ground as argued, and that it appears that the ground mat is a semicircular hollow shaped mat surrounding a tree and not a flat sheet laid on the ground as argued. Figure 13 of Applicant's invention appears to be very much similar to that of Allen for surrounding a plant, i.e. tree, and not laid flat on the ground. Therefore, it is concluded that the preamble, stating a ground mat, is not given weight to the interpretation of the mat being laid flat directly on the ground as generally thought of a ground mat.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Son T Nguyen'.

Son T Nguyen
Primary Examiner
AU 3643